

Exhibit 14

Vickers, Kevin

From: Stephens, Michelle
Sent: Monday, August 07, 2017 5:07 PM
To: Vickers, Kevin
Subject: FW: Public Records Request - Enforcement Investigation No. ER2010.013
Attachments: 2017.08.07 Letter to Custodian of Records.pdf

Michelle Stephens

Legal Secretary to
Patricia M. Stanton, Partner
Wayne O. Stacy, Partner
Sarah J. Guske, Partner
Christopher J. Carr, Partner
L. May Eaton, Associate

Baker Botts L.L.P.

michelle.stephens@bakerbotts.com

T +1.415.291.6003

F +1.415.291.6300

M +1.415.291.6200

101 California Street
Suite 3600, 36th Floor
San Francisco, CA 94111
USA



From: Stephens, Michelle
Sent: Monday, August 07, 2017 5:03 PM
To: 'PUBLICRECORDS@BCDC.CA.GOV'
Cc: Carr, Chris; 'Marc.Zeppetello@bcdcc.ca.gov'; 'mark@westpointharbor.com'; 'dsmith@sticeblock.com'
Subject: Public Records Request - Enforcement Investigation No. ER2010.013

Custodian of Records,

On behalf of Mr. Christopher J. Carr, please find attached a request for public records as they relate to the above-referenced matter.

Sincerely,

Michelle Stephens

Legal Secretary to
Patricia M. Stanton, Partner
Wayne O. Stacy, Partner

Sarah J. Guske, Partner
Christopher J. Carr, Partner
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San Francisco, CA 94111
USA



Vickers, Kevin

From: Vickers, Kevin
Sent: Monday, August 07, 2017 5:25 PM
To: 'Marc.Zeppetello@bcdca.gov'
Cc: Carr, Chris
Subject: FW: [Postmaster] Email Delivery Failure
Attachments: FW: Public Records Request - Enforcement Investigation No. ER2010.msg

Marc:

Regarding the CPRA request that Michelle Stephens sent today on behalf of Chris Carr (on which you were copied), please note that Michelle received an email delivery failure message concerning the "publicrecords@bcdca.gov" email address. That BCDC email address is the address provided on BCDC's website (http://www.bcdc.ca.gov/public_records.html). I thought you should be advised of the technical glitch, as it appears to be on BCDC's end, and it may affect receipt of other CPRA requests.

Kevin

Kevin E. Vickers
415.291.6107 - Direct
512.751.4195 - Cell
415.291.6307 - Fax
kevin.vickers@bakerbotts.com
Baker Botts L.L.P.
101 California Street
Suite 3600
San Francisco, CA 94111

-----Original Message-----

From: Stephens, Michelle
Sent: Monday, August 07, 2017 5:15 PM
To: Vickers, Kevin
Subject: FW: [Postmaster] Email Delivery Failure

-----Original Message-----

From: donotreply-mimecast@bakerbotts.com [<mailto:donotreply-mimecast@bakerbotts.com>]
Sent: Monday, August 07, 2017 5:04 PM
To: Stephens, Michelle
Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :
-- publicrecords@bcdca.gov

with the subject:

-- Public Records Request - Enforcement Investigation No. ER2010.013

could not be delivered. The problem appears to be :

-- Recipient email address is possibly incorrect

Additional information follows :

-- 5.4.1 [publicrecords@bccdc.ca.gov]: Recipient address rejected: Access denied
[BN1AFFO11OLC003.protection.gbl]

This condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

Vickers, Kevin

From: Zeppetello, Marc@BCDC <marc.zeppetello@bcdca.gov>
Sent: Tuesday, August 08, 2017 9:34 AM
To: Vickers, Kevin
Cc: Carr, Chris; Ogata, Gregory@BCDC
Subject: Re: [Postmaster] Email Delivery Failure

Thanks Kevin. I've passed your message on to Greg, who will check whether there is a problem with that email address.

From: "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>
Date: Monday, August 7, 2017 at 5:25 PM
To: Marc Zeppetello <Marc.Zeppetello@bcdca.gov>
Cc: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>
Subject: FW: [Postmaster] Email Delivery Failure

Marc:

Regarding the CPRA request that Michelle Stephens sent today on behalf of Chris Carr (on which you were copied), please note that Michelle received an email delivery failure message concerning the "publicrecords@bcdca.gov" email address. That BCDC email address is the address provided on BCDC's website (http://www.bcdc.ca.gov/public_records.html). I thought you should be advised of the technical glitch, as it appears to be on BCDC's end, and it may affect receipt of other CPRA requests.

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with the subject:

-- Public Records Request - Enforcement Investigation No. ER2010.013

could not be delivered. The problem appears to be :

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Additional information follows :

-- 5.4.1 [publicrecords@bcde.ca.gov]: Recipient address rejected: Access denied [BN1AFFO11OLC003.protection.gbl]

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Vickers, Kevin

From: Zeppetello, Marc@BCDC <marc.zeppetello@bcdcc.ca.gov>
Sent: Wednesday, August 09, 2017 1:01 PM
To: Carr, Chris; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC
Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013
Attachments: image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png

Chris and Kevin,

Regarding your August 7th Public Records Act request to inspect and copy public records concerning the permit violations at Westpoint Harbor and the facts asserted in the Violation Report/Complaint, we will have all the permit and enforcement files collected in one place for you review by this Friday, or anytime thereafter. As for copying records, we strongly prefer that you plan to post-it, clip or otherwise identify the records you would like copied so that our staff may copy (or scan) them for you. If you would like to bring your own copier or scanner, please let us know in advance so that we can consult with our records manager about this. We would need to more closely oversee the records review if you use your own copier/scanner to protect the integrity of BCDC's files. We do not allow the use of copiers/scanners with automatic feeders because they tend to cause damage to the original records.

In addition to the hard-copy files, it will take a few more days for us to provide copies of various email records that may not have been printed and placed in the permanent files. I estimate these email will be available by next Wednesday. We can probably scan them as a group and upload them to a dropbox for you, unless you'd like to review them at our office as well. One question of clarification on emails. Do you want us to provide copies of email communications between BCDC staff and David Smith and/or your office, or may we exclude such emails from the scope of the PRA request?

Please let me know if you have questions. Otherwise, please contact Greg Ogata directly to make arrangements for a date and time to review the permit and enforcement files.

Regards, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdcc.ca.gov

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Cc: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>, Marc Zeppetello <Marc.Zeppetello@bcdcc.ca.gov>, "mark@westpointharbor.com" <mark@westpointharbor.com>, David Smith <dsmith@sticeblock.com>
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Vickers, Kevin

From: Carr, Chris
Sent: Thursday, August 10, 2017 9:28 PM
To: 'Zeppetello, Marc@BCDC'; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

Thanks for your August 9 e-mail concerning our clients' August 7 CPRA request.

As you surely appreciate, time is of the essence for our receipt of documents responsive to that CPRA request, as we need to be able to carefully review them and, where appropriate, use them in the Statement of Defense our clients are required to submit to BCDC on August 28. Indeed, it is for this very reason that we believe it makes eminent sense, as you suggest, that BCDC "exclude ... from the scope of the PRA request" any "email communications between BCDC staff and David Smith and/or [our office]."

As for copying records that are already in paper/hard copy, we appreciate your commitment to have responsive documents collected in one place for our review by tomorrow, August 11. We very much want to be accommodating of your desire that we not copy the documents ourselves, but, instead, allow BCDC to do the copying. However, we note that BCDC's website specifies that CPRA requestors can elect to send a bonded copy service to BCDC offices to copy responsive documents. Nonetheless, in a further effort to be accommodating of BCDC's wishes, while not prejudicing our clients' ability to adequately defend themselves before the Enforcement Committee against the charges alleged in the Violation Report/Complaint, we will accede to your request, provided that you and BCDC commit to provide us copies of all the responsive documents by 4:30 Pacific time on Friday, August 18.

With respect to electronic documents, your commitment to provide e-mails by next Wednesday (August 16) is acceptable. However, we believe it would be more efficient and save time for both BCDC staff and our side for the e-mails to be produced to us electronically (a thumb drive would be fine, which we can provide). I am confident your exclusive reference to "emails" when discussing electronically stored records was not meant to exclude from CPRA disclosure any responsive communications on any of staffs' personal e-mail, text, twitter, or other social media communication accounts, especially in light of the recent decision of the California Supreme Court on that very subject. Please confirm that this is, indeed, the case. Additionally, if there are any other types of electronic files responsive to the CPRA request besides emails (such as audio files, Word documents, or digital images), those should be provided. As with the electronically stored e-mails, it makes most sense and is consistent with the CPRA to provide electronically stored files in electronic format that preserves the original metadata. As you know, electronic metadata could be relevant to the allegations in the Violation Report/Complaint.

Thanks. Chris.

Chris Carr
Partner

Baker Botts L.L.P.
chris.carr@bakerbotts.com
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F +1.415.291.6308
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Please let me know if you have questions. Otherwise, please contact Greg Ogata directly to make arrangements for a date and time to review the permit and enforcement files.

Regards, Marc

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Vickers, Kevin

From: Zeppetello, Marc@BCDC <marc.zeppetello@bcdca.gov>
Sent: Friday, August 11, 2017 10:48 AM
To: Carr, Chris; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC
Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013
Attachments: image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png

Chris,

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I would like to suggest that the first step should be for your office to review the hard copy files and identify what you would like copied. If you would like copies of a relatively discrete and limited number of records, BCDC staff (i.e., Greg) will make the copies and there should be no problem providing copies by next Friday (assuming you review the files this afternoon or next Monday or Tuesday). If you decide that you would like copies of large portions of the hard copy files, we will either send the files out to a commercial copy service with instructions to copy what you've designated (and to bill your office) or we can consider the option of your firm retaining a bonded copy service to copy the designated records here at our office. In either case, there should be no problem providing the copies of designated records by next Friday if you do not delay your review of the hard copy files.

Thanks for confirming that we may exclude email communication between BCDC staff and David Smith or your office.

I'll respond to the issues raised in your third paragraph later today or by Monday.

Thanks, Marc

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Marc:

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BAKER BOTTS



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As for copying records that are already in paper/hard copy, we appreciate your commitment to have responsive documents collected in one place for our review by tomorrow, August 11. We very much want to be accommodating of your desire that we not copy the documents ourselves, but, instead, allow BCDC to do the copying. However, we note that BCDC's website specifies that CPRA requestors can elect to send a bonded copy service to BCDC offices to copy responsive documents. Nonetheless, in a further effort to be accommodating of BCDC's wishes, while not prejudicing our clients' ability to adequately defend themselves before the Enforcement Committee against the charges alleged in the Violation Report/Complaint, we will accede to your request, provided that you and BCDC commit to provide us copies of all the responsive documents by 4:30 Pacific time on Friday, August 18.

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communication accounts, especially in light of the recent decision of the California Supreme Court on that very subject. Please confirm that this is, indeed, the case. Additionally, if there are any other types of electronic files responsive to the CPRA request besides emails (such as audio files, Word documents, or digital images), those should be provided. As with the electronically stored e-mails, it makes most sense and is consistent with the CPRA to provide electronically stored files in electronic format that preserves the original metadata. As you know, electronic metadata could be relevant to the allegations in the Violation Report/Complaint.

Thanks. Chris.

Chris Carr

Partner

Baker Botts L.L.P.

chris.carr@bakerbotts.com

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F +1.415.291.6308

M +1.415.373.2720

101 California Street
San Francisco, CA 94111
USA



From: Zeppetello, Marc@BCDC [<mailto:marc.zeppetello@bcdcc.ca.gov>]

Sent: Wednesday, August 09, 2017 1:01 PM

To: Carr, Chris; Vickers, Kevin

Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC

Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013

Chris and Kevin,

Regarding your August 7th Public Records Act request to inspect and copy public records concerning the permit violations at Westpoint Harbor and the facts asserted in the Violation Report/Complaint, we will have all the permit and enforcement files collected in one place for you review by this Friday, or anytime thereafter. As for copying records, we strongly prefer that you plan to post-it, clip or otherwise identify the records you would like copied so that our staff may copy (or scan) them for you. If you would like to bring your own copier or scanner, please let us know in advance so that we can consult with our records manager about this. We would need to more closely oversee the records review if you use your own copier/scanner to protect the integrity of BCDC's files. We do not allow the use of copers/scanners with automatic feeders because they tend to cause damage to the original records.

In addition to the hard-copy files, it will take a few more days for us to provide copies of various email records that may not have been printed and placed in the permanent files. I estimate these email will be available by next Wednesday. We can probably scan them as a group and upload them to a dropbox for you, unless you'd like to review them at our office as well. One question of clarification on emails. Do you want us to provide copies of email communications between BCDC staff and David Smith and/or your office, or may we exclude such emails from the scope of the PRA request?

Please let me know if you have questions. Otherwise, please contact Greg Ogata directly to make arrangements for a date and time to review the permit and enforcement files.

Regards, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

From: "michelle.stephens@bakerbotts.com" <michelle.stephens@bakerbotts.com>
Date: Monday, August 7, 2017 at 5:03 PM
To: "PUBLCRECORDS@BCDC.CA.GOV" <PUBLCRECORDS@BCDC.CA.GOV>
Cc: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>, Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>, "mark@westpointharbor.com" <mark@westpointharbor.com>, David Smith <dsmith@sticeblock.com>
Subject: Public Records Request - Enforcement Investigation No. ER2010.013

Custodian of Records,

On behalf of Mr. Christopher J. Carr, please find attached a request for public records as they relate to the above-referenced matter.

Sincerely,

Michelle Stephens

Legal Secretary to
Patricia M. Stanton, Partner
Wayne O. Stacy, Partner
Sarah J. Guske, Partner
Christopher J. Carr, Partner
L. May Eaton, Associate

Baker Botts L.L.P.

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Vickers, Kevin

From: Vickers, Kevin
Sent: Friday, August 11, 2017 8:17 PM
To: 'Zeppetello, Marc@BCDC'
Cc: 'dsmith@sticeblock.com'; 'Ogata, Gregory@BCDC'; Carr, Chris
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

As we discussed this afternoon, I will return to BCDC offices on Monday to continue reviewing the hardcopy public records that BCDC has provided access to. Based on the records that I viewed this today, it is clear that many of BCDC's hardcopy documents are indeed relevant to the California Public Records Act request submitted, which is limited to public records that relate to "alleged permit violations or purported facts asserted in the Violation Report/Complaint for the Imposition of Administrative Civil Penalties (Enforcement Investigation No. ER2010.013)." However, many of the records BCDC provided for review appear to be irrelevant to the CPRA request.

Given the fact that the records BCDC provided for review this afternoon were numerous, contained information that appears to be irrelevant to the CPRA request, and were only loosely organized, I think that I may need to return on Tuesday (Aug. 15) as well as Monday. You mentioned that Greg Ogata would be out of the office on Monday. I know Greg will be tasked with the job of making copies, if we accommodate BCDC's desire that we not copy the documents ourselves. In light of Greg's day out of the office, please confirm that BCDC can provide us copies of the responsive documents by 4:30 on Friday (Aug. 18), if we've designated all of the pages we'd like copied by the end of the day Tuesday.

Thank you,
Kevin

Kevin E. Vickers
415.291.6107 - Direct
512.751.4195 - Cell
415.291.6307 - Fax
kevin.vickers@bakerbotts.com

Baker Botts L.L.P.
101 California Street
Suite 3600
San Francisco, CA 94111

From: Carr, Chris
Sent: Friday, August 11, 2017 11:52 AM
To: 'Zeppetello, Marc@BCDC'; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

Thanks for your e-mail. Kevin Vickers will come to your offices this afternoon.

Thanks. Chris.

Chris Carr

Partner

Baker Botts L.L.P.

chris.carr@bakerbotts.com

T +1.415.291.6208

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M +1.415.373.2720

101 California Street
San Francisco, CA 94111
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From: Zeppetello, Marc@BCDC [<mailto:marc.zeppetello@bcdcc.ca.gov>]

Sent: Friday, August 11, 2017 10:48 AM

To: Carr, Chris; Vickers, Kevin

Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC

Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013

Chris,

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I would like to suggest that the first step should be for your office to review the hard copy files and identify what you would like copied. If you would like copies of a relatively discrete and limited number of records, BCDC staff (i.e., Greg) will make the copies and there should be no problem providing copies by next Friday (assuming you review the files this afternoon or next Monday or Tuesday). If you decide that you would like copies of large portions of the hard copy files, we will either send the files out to a commercial copy service with instructions to copy what you've designated (and to bill your office) or we can consider the option of your firm retaining a bonded copy service to copy the designated records here at our office. In either case, there should be no problem providing the copies of designated records by next Friday if you do not delay your review of the hard copy files.

Thanks for confirming that we may exclude email communication between BCDC staff and David Smith or your office.

I'll respond to the issues raised in your third paragraph later today or by Monday.

Thanks, Marc

Marc A. Zeppetello
Chief Counsel

San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdcc.ca.gov

From: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>
Date: Thursday, August 10, 2017 at 9:28 PM
To: Marc Zeppetello <Marc.Zeppetello@bcdcc.ca.gov>, "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>
Cc: David Smith <dsmith@sticeblock.com>, "Ogata, Gregory@BCDC" <gregory.ogata@bcdcc.ca.gov>
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

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Thanks. Chris.

Chris Carr
Partner

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Sent: Wednesday, August 09, 2017 1:01 PM
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Please let me know if you have questions. Otherwise, please contact Greg Ogata directly to make arrangements for a date and time to review the permit and enforcement files.

Regards, Marc

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Telephone: (415) 352-3655
marc.zeppetello@bcdcc.ca.gov

From: "michelle.stephens@bakerbotts.com" <michelle.stephens@bakerbotts.com>
Date: Monday, August 7, 2017 at 5:03 PM
To: "PUBRICRECORDS@BCDC.CA.GOV" <PUBRICRECORDS@BCDC.CA.GOV>
Cc: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>, Marc Zeppetello <Marc.Zeppetello@bcdca.gov>, "mark@westpointharbor.com" <mark@westpointharbor.com>, David Smith <dsmith@sticeblock.com>
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Legal Secretary to
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Wayne O. Stacy, Partner
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Vickers, Kevin

From: Zeppetello, Marc@BCDC <marc.zeppetello@bcdca.gov>
Sent: Monday, August 14, 2017 9:16 AM
To: Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Carr, Chris; Zeppetello, Marc@BCDC
Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013
Attachments: image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png

Kevin,

At the present time, I do not see any problem in BCDC providing you copies of responsive documents that you identify for copying by 4:30 pm this Friday, assuming you designate all pages you would like copied by the end of the day on Tuesday. If there are a large number of documents that Greg does not feel that he can copy himself by Friday, we will send the documents out for copying by a commercial copy service (or you can retain a bonded copy service to copy them here). There may be an exception if you request copies of large oversized plans or architectural drawings that need to be sent out to a service with the capabilities to copy such oversized documents, although if you are willing to pay "rush" charges, if necessary, I expect any oversized copies could also be provided by this Friday.

You commented that while you limited your PRA request, the records BCDC has provided include both responsive documents and many that contain information that appears to be irrelevant to the request, and that the records are only loosely organized. We appreciate that you have limited the scope of the PRA request. However, the description of records "that relate in any way to alleged permit violations or purported facts asserted in the Violation Report/Complaint" is nevertheless broad and also vague and ambiguous in that it does not "reasonably describe an identifiable record or records" (Gov't Code 6253(b)). Therefore, we have provided for inspection and copying all hard-copy permitting and enforcement files for Westpoint Harbor, as they are maintained in the normal course of business. This allows you to make your own determination of the documents that you conclude are responsive to the PRA request, rather than requiring BCDC staff interpret your request and make that determination for you, with the attendant possibility that you might later disagree and claim that staff failed to provide for inspection documents you believe are responsive.

Thanks, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdca.gov

From: "Kevin.Vickers@bakerbotts.com" <Kevin.Vickers@bakerbotts.com>
Date: Friday, August 11, 2017 at 8:16 PM
To: Marc Zeppetello <Marc.Zeppetello@bcdca.gov>
Cc: David Smith <dsmith@sticeblock.com>, "Ogata, Gregory@BCDC" <gregory.ogata@bcdca.gov>, "Chris.Carr@bakerbotts.com" <chris.carr@bakerbotts.com>
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

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Thank you,
Kevin

Kevin E. Vickers
415.291.6107 - Direct
512.751.4195 - Cell
415.291.6307 - Fax
kevin.vickers@bakerbotts.com

Baker Botts L.L.P.
101 California Street
Suite 3600
San Francisco, CA 94111

From: Carr, Chris
Sent: Friday, August 11, 2017 11:52 AM
To: 'Zeppetello, Marc@BCDC'; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

Thanks for your e-mail. Kevin Vickers will come to your offices this afternoon.

Thanks. Chris.

Chris Carr
Partner

Baker Botts L.L.P.

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BAKER BOTTS



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Sent: Friday, August 11, 2017 10:48 AM

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Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC

Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013

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I'll respond to the issues raised in your third paragraph later today or by Monday.

Thanks, Marc

Marc A. Zeppetello

Chief Counsel

San Francisco Bay Conservation

and Development Commission

455 Golden Gate Avenue, Suite 10600

San Francisco, CA 94102

Telephone: (415) 352-3655

marc.zeppetello@bcdcc.ca.gov

From: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>
Date: Thursday, August 10, 2017 at 9:28 PM
To: Marc Zeppetello <Marc.Zeppetello@bcdcc.ca.gov>, "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>
Cc: David Smith <dsmith@sticeblock.com>, "Ogata, Gregory@BCDC" <gregory.ogata@bcdcc.ca.gov>
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Thanks. Chris.

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Sent: Wednesday, August 09, 2017 1:01 PM
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Cc: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>, Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>, "mark@westpointharbor.com" <mark@westpointharbor.com>, David Smith <dsmith@sticeblock.com>
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Vickers, Kevin

From: Zeppetello, Marc@BCDC <marc.zeppetello@bccdc.ca.gov>
Sent: Monday, August 14, 2017 11:42 AM
To: Carr, Chris; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC
Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013
Attachments: image001.png; image002.png; image003.png; image004.png; image005.png; image006.png; image007.png

Chris,

This is in response to the issues raised in the third paragraph of your August 10 email (below) re: your PRA request.

First, BCDC policy is that employees are not to transfer documents to, or work on agency business on, personal email accounts or on non-office cloud platforms (such as Google Docs). In addition, after checking with current BCDC staff, this is to confirm that no staff-person has communications or other records related to Westpoint Harbor (WPH) on a personal email account, no one has posted communications related to WPH on a social media account, and no one has any other communications related to WPH, including texts, on a personal electronic device.

Second, as for electronic files, BCDC does have electronic permitting and enforcement files related to WPH. However, the files are not comprehensive or complete. Agency practice is to maintain the hard-copy files as the primary filing location for records related to a particular matter. The electronic files generally include copies of final correspondence and permit documents, and are mostly redundant of the hard-copy files. In any event, I will ask Greg to go through the electronic permitting and enforcement files for WPH and to copy responsive electronic documents for you to a CD or flash drive. One exception to my observation about the redundancy of the electronic files is that the electronic enforcement file contains digital photographs of various recent site visits that are not in the hard-copy files; we will provide electronic copies of all of those photographs. The electronic enforcement file also includes the Violation Report/Complaint, the 94 documents included on the index of the administrative record, and the subpoenas for documents and interrogatories for which you accepted service a couple of weeks ago. We will not copy any of these materials unless you ask that we do so.

Third, in relation to electronic files, I respectfully disagree with your statement that “electronic metadata could be relevant to the allegations in the Violation Report/Complaint.” While many categories and types of public records are available for inspection and copying under the PRA, the scope of the PRA is not co-extensive with, or in some respects not quite so broad as, the scope of discovery in civil litigation. In particular, as you know, the PRA does not require the disclosure of drafts. Gov’t Code 6254(a). Metadata potentially imbedded in a Word document is an attribute of or reflects information concerning a draft document and, therefore, is exempt from disclosure under the PRA. For this reason, we generally will provide pdf copies of final correspondence and permit and enforcement documents in the electronic files. On a related point, as you also know, the PRA exempts from disclosure records, the disclosure of which is exempt or prohibited from disclosure pursuant to federal or state law, including but not limited to, provisions of the Evidence Code relating to privilege. Thus, in addition to not providing electronic versions of draft documents, we will not provide electronic records protected from disclosure by the attorney-client privilege, the attorney-work product doctrine, or the deliberative process privilege. In that regard, to the extent that there may be draft documents or privileged records contained in the hard-copy files, the disclosure of any such records that are exempt from disclosure under the PRA is inadvertent; we request that you return all copies of any such hard-copy records (drafts or privileged documents) to BCDC and we reserve the right to object to the introduction of such records, or portions of such records, in this enforcement proceeding.

Finally, as to emails, we do not have a central electronic file for emails related to WPH. There may be a few scattered emails in the electronic permitting and enforcement files (which we will copy for you unless a communication is privileged), but agency practice generally is to print out for the hard-copy file email communications that are deemed to transmit substantive information to permittees or third-parties. Moreover, BCDC’s record retention schedule provides that “transitory emails” — which are emails that are created primarily for the communication of informal information as opposed to the perpetuation or formalization of knowledge — are to be destroyed when they have served their purpose. As a result, other than emails

printed for the hard-copy files, emails are managed by individual staff on their individual work computers and are deleted or retained in the discretion of each staff-person or in accordance with their individual practices. Therefore, to the extent their are responsive emails on the individual work computers of individual staff, I have asked each staff-person involved with WPH to print their WPH emails for my review. We will provide electronic copies of all responsive and non-privileged emails by scanning the emails as one or more pdf documents. However, it would be unduly burdensome to copy each individual email electronically because doing so would involve repeating the substantial work that has already been done by individual staff to locate individual emails on their individual computers.

I believe I have fully responded to the issues raised by your August 10th email. If you have questions or would like to discuss any issues related your your PRA request, please let me know. Our intention is to comply fully with BCDC's obligation under the PRA and provide copies of all responsive documents not exempt from disclosure, whether in the hard-copy files or in electronic form.

Thanks, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

From: Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>
Date: Friday, August 11, 2017 at 10:47 AM
To: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>, "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>
Cc: David Smith <dsmith@sticeblock.com>, "Ogata, Gregory@BCDC" <gregory.ogata@bcdc.ca.gov>, Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>
Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013

Chris,

Your email from last night raises a number of issues, and I do not have time to respond to all of them this morning. However, in the event that you are awaiting a response before making arrangements to review the paper/hard copy files, I'm writing at this time to address the issue of copying the records from those files that you (or someone from your office) designate for copying.

I would like to suggest that the first step should be for your office to review the hard copy files and identify what you would like copied. If you would like copies of a relatively discrete and limited number of records, BCDC staff (i.e., Greg) will make the copies and there should be no problem providing copies by next Friday (assuming you review the files this afternoon or next Monday or Tuesday). If you decide that you would like copies of large portions of the hard copy files, we will either send the files out to a commercial copy service with instructions to copy what you've designated (and to bill your office) or we can consider the option of your firm retaining a bonded copy service to copy the designated records here at our office. In either case, there should be no problem providing the copies of designated records by next Friday if you do not delay your review of the hard copy files.

Thanks for confirming that we may exclude email communication between BCDC staff and David Smith or your office.

I'll respond to the issues raised in your third paragraph later today or by Monday.

Thanks, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

From: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>
Date: Thursday, August 10, 2017 at 9:28 PM
To: Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>, "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>
Cc: David Smith <dsmith@sticeblock.com>, "Ogata, Gregory@BCDC" <gregory.ogata@bcdc.ca.gov>
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

Thanks for your August 9 e-mail concerning our clients' August 7 CPRA request.

As you surely appreciate, time is of the essence for our receipt of documents responsive to that CPRA request, as we need to be able to carefully review them and, where appropriate, use them in the Statement of Defense our clients are required to submit to BCDC on August 28. Indeed, it is for this very reason that we believe it makes eminent sense, as you suggest, that BCDC "exclude ... from the scope of the PRA request" any "email communications between BCDC staff and David Smith and/or [our office]."

As for copying records that are already in paper/hard copy, we appreciate your commitment to have responsive documents collected in one place for our review by tomorrow, August 11. We very much want to be accommodating of your desire that we not copy the documents ourselves, but, instead, allow BCDC to do the copying. However, we note that BCDC's website specifies that CPRA requestors can elect to send a bonded copy service to BCDC offices to copy responsive documents. Nonetheless, in a further effort to be accommodating of BCDC's wishes, while not prejudicing our clients' ability to adequately defend themselves before the Enforcement Committee against the charges alleged in the Violation Report/Complaint, we will accede to your request, provided that you and BCDC commit to provide us copies of all the responsive documents by 4:30 Pacific time on Friday, August 18.

With respect to electronic documents, your commitment to provide e-mails by next Wednesday (August 16) is acceptable. However, we believe it would be more efficient and save time for both BCDC staff and our side for the e-mails to be produced to us electronically (a thumb drive would be fine, which we can provide). I am confident your exclusive reference to "emails" when discussing electronically stored records was not meant to exclude from CPRA disclosure any responsive communications on any of staffs' personal e-mail, text, twitter, or other social media communication accounts, especially in light of the recent decision of the California Supreme Court on that very subject. Please confirm that this is, indeed, the case. Additionally, if there are any other types of electronic files responsive to the CPRA request besides emails (such as audio files, Word documents, or digital images), those should be provided. As with the electronically stored e-mails, it makes most sense and is consistent with the CPRA to provide

electronically stored files in electronic format that preserves the original metadata. As you know, electronic metadata could be relevant to the allegations in the Violation Report/Complaint.

Thanks. Chris.

Chris Carr

Partner

Baker Botts L.L.P.

chris.carr@bakerbotts.com

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M +1.415.373.2720

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From: Zeppetello, Marc@BCDC [<mailto:marc.zeppetello@bcdcc.ca.gov>]

Sent: Wednesday, August 09, 2017 1:01 PM

To: Carr, Chris; Vickers, Kevin

Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC

Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013

Chris and Kevin,

Regarding your August 7th Public Records Act request to inspect and copy public records concerning the permit violations at Westpoint Harbor and the facts asserted in the Violation Report/Complaint, we will have all the permit and enforcement files collected in one place for you review by this Friday, or anytime thereafter. As for copying records, we strongly prefer that you plan to post-it, clip or otherwise identify the records you would like copied so that our staff may copy (or scan) them for you. If you would like to bring your own copier or scanner, please let us know in advance so that we can consult with our records manager about this. We would need to more closely oversee the records review if you use your own copier/scanner to protect the integrity of BCDC's files. We do not allow the use of copiers/scanners with automatic feeders because they tend to cause damage to the original records.

In addition to the hard-copy files, it will take a few more days for us to provide copies of various email records that may not have been printed and placed in the permanent files. I estimate these email will be available by next Wednesday. We can probably scan them as a group and upload them to a dropbox for you, unless you'd like to review them at our office as well. One question of clarification on emails. Do you want us to provide copies of email communications between BCDC staff and David Smith and/or your office, or may we exclude such emails from the scope of the PRA request?

Please let me know if you have questions. Otherwise, please contact Greg Ogata directly to make arrangements for a date and time to review the permit and enforcement files.

Regards, Marc

Marc A. Zeppetello
Chief Counsel

San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

From: "michelle.stephens@bakerbotts.com" <michelle.stephens@bakerbotts.com>
Date: Monday, August 7, 2017 at 5:03 PM
To: "PUBRICRECORDS@BCDC.CA.GOV" <PUBRICRECORDS@BCDC.CA.GOV>
Cc: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>, Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>, "mark@westpointharbor.com" <mark@westpointharbor.com>, David Smith <dsmith@sticeblock.com>
Subject: Public Records Request - Enforcement Investigation No. ER2010.013

Custodian of Records,

On behalf of Mr. Christopher J. Carr, please find attached a request for public records as they relate to the above-referenced matter.

Sincerely,

Michelle Stephens

Legal Secretary to
Patricia M. Stanton, Partner
Wayne O. Stacy, Partner
Sarah J. Guske, Partner
Christopher J. Carr, Partner
L. May Eaton, Associate

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Vickers, Kevin

From: Vickers, Kevin
Sent: Tuesday, August 15, 2017 4:32 PM
To: 'Marc.Zeppetello@bcdcc.ca.gov'; 'Ogata, Gregory@BCDC'
Cc: Carr, Chris; 'David Smith'
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc and Greg,

As you know, I finished reviewing the hardcopy public records that BCDC provided access to. As discussed, it is my understanding that Greg will make copies of the documents that I marked. I marked documents according to Greg's direction by using large post-it notes wrapped around the edges of the documents to be copied. I wrote my initials in pencil on those large post-it notes. Please ensure that documents containing colored text, markings, images, handwriting, highlighting, etc. are copied in color. Also, please copy the backs of pages that have any information (for example, several pages have "date-received" stamps on the back). And please leave original BCDC staff post-it notes, post-it "flags" and other such materials on the documents when copied. One of the reasons I wrote my initials on the large post-it notes that I used for marking was to help you readily identify which post-it notes were part of the original BCDC public record.

Thank you,
Kevin

Kevin E. Vickers
415.291.6107 - Direct
512.751.4195 - Cell
415.291.6307 - Fax
kevin.vickers@bakerbotts.com

Baker Botts L.L.P.
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From: Zeppetello, Marc@BCDC [mailto:marc.zeppetello@bcdcc.ca.gov]
Sent: Monday, August 14, 2017 9:16 AM
To: Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Carr, Chris; Zeppetello, Marc@BCDC
Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013

Kevin,

At the present time, I do not see any problem in BCDC providing you copies of responsive documents that you identify for copying by 4:30 pm this Friday, assuming you designate all pages you would like copied by the end of the day on Tuesday. If there are a large number of documents that Greg does not feel that he can copy himself by Friday, we will send the documents out for copying by a commercial copy service (or you can retain a bonded copy service to copy them here). There may be an exception if you request copies of large oversized plans or architectural drawings that need to be sent out to a

service with the capabilities to copy such oversized documents, although if you are willing to pay "rush" charges, if necessary, I expect any oversized copies could also be provided by this Friday.

You commented that while you limited your PRA request, the records BCDC has provided include both responsive documents and many that contain information that appears to be irrelevant to the request, and that the records are only loosely organized. We appreciate that you have limited the scope of the PRA request. However, the description of records "that relate in any way to alleged permit violations or purported facts asserted in the Violation Report/Complaint" is nevertheless broad and also vague and ambiguous in that it does not "reasonably describe an identifiable record or records" (Gov't Code 6253(b)). Therefore, we have provided for inspection and copying all hard-copy permitting and enforcement files for Westpoint Harbor, as they are maintained in the normal course of business. This allows you to make your own determination of the documents that you conclude are responsive to the PRA request, rather than requiring BCDC staff interpret your request and make that determination for you, with the attendant possibility that you might later disagree and claim that staff failed to provide for inspection documents you believe are responsive.

Thanks, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

From: "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>
Date: Friday, August 11, 2017 at 8:16 PM
To: Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>
Cc: David Smith <dsmith@sticeblock.com>, "Ogata, Gregory@BCDC" <gregory.ogata@bcdc.ca.gov>, "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

As we discussed this afternoon, I will return to BCDC offices on Monday to continue reviewing the hardcopy public records that BCDC has provided access to. Based on the records that I viewed this today, it is clear that many of BCDC's hardcopy documents are indeed relevant to the California Public Records Act request submitted, which is limited to public records that relate to "alleged permit violations or purported facts asserted in the Violation Report/Complaint for the Imposition of Administrative Civil Penalties (Enforcement Investigation No. ER2010.013)." However, many of the records BCDC provided for review appear to be irrelevant to the CPRA request.

Given the fact that the records BCDC provided for review this afternoon were numerous, contained information that appears to be irrelevant to the CPRA request, and were only loosely organized, I think that I may need to return on Tuesday (Aug. 15) as well as Monday. You mentioned that Greg Ogata would be out of the office on Monday. I know Greg will be tasked with the job of making copies, if we accommodate BCDC's desire that we not copy the documents ourselves. In light of Greg's day out of the office, please confirm that BCDC can provide us copies of the responsive documents by 4:30 on Friday (Aug. 18), if we've designated all of the pages we'd like copied by the end of the day Tuesday.

Thank you,
Kevin

Kevin E. Vickers
415.291.6107 - Direct
512.751.4195 - Cell
415.291.6307 - Fax
kevin.vickers@bakerbotts.com

Baker Botts L.L.P.
101 California Street
Suite 3600
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From: Carr, Chris
Sent: Friday, August 11, 2017 11:52 AM
To: 'Zeppetello, Marc@BCDC'; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

Thanks for your e-mail. Kevin Vickers will come to your offices this afternoon.

Thanks. Chris.

Chris Carr
Partner

Baker Botts L.L.P.
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T +1.415.291.6208
F +1.415.291.6308
M +1.415.373.2720

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From: Zeppetello, Marc@BCDC [<mailto:marc.zeppetello@bcdca.gov>]
Sent: Friday, August 11, 2017 10:48 AM
To: Carr, Chris; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC
Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013

Chris,

Your email from last night raises a number of issues, and I do not have time to respond to all of them this morning. However, in the event that you are awaiting a response before making arrangements to review the paper/hard copy files, I'm writing at this time to address the issue of copying the records from those files that you (or someone from your office) designate for copying.

I would like to suggest that the first step should be for your office to review the hard copy files and identify what you would like copied. If you would like copies of a relatively discrete and limited number of records, BCDC staff (i.e., Greg) will make the copies and there should be no problem providing copies by next Friday (assuming you review the files this afternoon or next Monday or Tuesday). If you decide that you would like copies of large portions of the hard copy files, we will either send the files out to a commercial copy service with instructions to copy what you've designated (and to bill your office) or we can consider the option of your firm retaining a bonded copy service to copy the designated records here at our office. In either case, there should be no problem providing the copies of designated records by next Friday if you do not delay your review of the hard copy files.

Thanks for confirming that we may exclude email communication between BCDC staff and David Smith or your office.

I'll respond to the issues raised in your third paragraph later today or by Monday.

Thanks, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

From: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>
Date: Thursday, August 10, 2017 at 9:28 PM
To: Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>, "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>
Cc: David Smith <dsmith@sticeblock.com>, "Ogata, Gregory@BCDC" <gregory.ogata@bcdc.ca.gov>
Subject: RE: Public Records Request - Enforcement Investigation No. ER2010.013

Marc:

Thanks for your August 9 e-mail concerning our clients' August 7 CPRA request.

As you surely appreciate, time is of the essence for our receipt of documents responsive to that CPRA request, as we need to be able to carefully review them and, where appropriate, use them in the Statement of Defense our clients are required to submit to BCDC on August 28. Indeed, it is for this very reason that we believe it makes eminent sense, as you suggest, that BCDC "exclude ... from the scope of the PRA request" any "email communications between BCDC staff and David Smith and/or [your office]."

As for copying records that are already in paper/hard copy, we appreciate your commitment to have responsive documents collected in one place for our review by tomorrow, August 11. We very much want to be accommodating of

your desire that we not copy the documents ourselves, but, instead, allow BCDC to do the copying. However, we note that BCDC's website specifies that CPRA requestors can elect to send a bonded copy service to BCDC offices to copy responsive documents. Nonetheless, in a further effort to be accommodating of BCDC's wishes, while not prejudicing our clients' ability to adequately defend themselves before the Enforcement Committee against the charges alleged in the Violation Report/Complaint, we will accede to your request, provided that you and BCDC commit to provide us copies of all the responsive documents by 4:30 Pacific time on Friday, August 18.

With respect to electronic documents, your commitment to provide e-mails by next Wednesday (August 16) is acceptable. However, we believe it would be more efficient and save time for both BCDC staff and our side for the e-mails to be produced to us electronically (a thumb drive would be fine, which we can provide). I am confident your exclusive reference to "emails" when discussing electronically stored records was not meant to exclude from CPRA disclosure any responsive communications on any of staffs' personal e-mail, text, twitter, or other social media communication accounts, especially in light of the recent decision of the California Supreme Court on that very subject. Please confirm that this is, indeed, the case. Additionally, if there are any other types of electronic files responsive to the CPRA request besides emails (such as audio files, Word documents, or digital images), those should be provided. As with the electronically stored e-mails, it makes most sense and is consistent with the CPRA to provide electronically stored files in electronic format that preserves the original metadata. As you know, electronic metadata could be relevant to the allegations in the Violation Report/Complaint.

Thanks. Chris.

Chris Carr
Partner

Baker Botts L.L.P.
chris.carr@bakerbotts.com
T +1.415.291.6208
F +1.415.291.6308
M +1.415.373.2720

101 California Street
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USA



From: Zeppetello, Marc@BCDC [<mailto:marc.zeppetello@bcdcc.ca.gov>]
Sent: Wednesday, August 09, 2017 1:01 PM
To: Carr, Chris; Vickers, Kevin
Cc: dsmith@sticeblock.com; Ogata, Gregory@BCDC; Zeppetello, Marc@BCDC
Subject: Re: Public Records Request - Enforcement Investigation No. ER2010.013

Chris and Kevin,

Regarding your August 7th Public Records Act request to inspect and copy public records concerning the permit violations at Westpoint Harbor and the facts asserted in the Violation Report/Complaint, we will have all the permit and enforcement files collected in one place for you review by this Friday, or anytime thereafter. As for copying records, we strongly prefer that you plan to post-it, clip or otherwise identify the records you would like copied so that our staff may copy (or scan) them for you. If you would like to bring your own copier or scanner, please let us know in advance so that we can consult with our records manager about this. We would need to more closely oversee the records review if you use your own copier/scanner

to protect the integrity of BCDC's files. We do not allow the use of copiers/scanners with automatic feeders because they tend to cause damage to the original records.

In addition to the hard-copy files, it will take a few more days for us to provide copies of various email records that may not have been printed and placed in the permanent files. I estimate these email will be available by next Wednesday. We can probably scan them as a group and upload them to a dropbox for you, unless you'd like to review them at our office as well. One question of clarification on emails. Do you want us to provide copies of email communications between BCDC staff and David Smith and/or your office, or may we exclude such emails from the scope of the PRA request?

Please let me know if you have questions. Otherwise, please contact Greg Ogata directly to make arrangements for a date and time to review the permit and enforcement files.

Regards, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdc.ca.gov

From: "michelle.stephens@bakerbotts.com" <michelle.stephens@bakerbotts.com>
Date: Monday, August 7, 2017 at 5:03 PM
To: "PUBLCRECORDS@BCDC.CA.GOV" <PUBLCRECORDS@BCDC.CA.GOV>
Cc: "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>, Marc Zeppetello <Marc.Zeppetello@bcdc.ca.gov>, "mark@westpointharbor.com" <mark@westpointharbor.com>, David Smith <dsmith@sticeblock.com>
Subject: Public Records Request - Enforcement Investigation No. ER2010.013

Custodian of Records,

On behalf of Mr. Christopher J. Carr, please find attached a request for public records as they relate to the above-referenced matter.

Sincerely,

Michelle Stephens
Legal Secretary to
Patricia M. Stanton, Partner
Wayne O. Stacy, Partner
Sarah J. Guske, Partner
Christopher J. Carr, Partner
L. May Eaton, Associate

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Vickers, Kevin

From: Ogata, Gregory@BCDC <gregory.ogata@bcdc.ca.gov>
Sent: Wednesday, August 16, 2017 12:50 PM
To: Vickers, Kevin
Cc: Zeppetello, Marc@BCDC
Subject: Records Request Status

Good afternoon, Kevin.

I have a few hundred pages or so of documents that I have copied, ready to be picked up by your courier service. I'll keep working on the rest of the copies throughout today, Thursday and Friday.

As for electronic files, I will have those available to you sometime today. I can either throw them onto a disc or upload everything to a dropbox account where you can access them. This will also include scans of all emails we've prepared for your PRA.

Please let me know how you would like us to proceed.

Gregory Ogata
Legal & Enforcement Support
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
(415) 352/3600 | gregory.ogata@bcdc.ca.gov

Vickers, Kevin

From: Ogata, Gregory@BCDC <gregory.ogata@bcdc.ca.gov>
Sent: Wednesday, August 16, 2017 3:35 PM
To: Vickers, Kevin
Cc: Zeppetello, Marc@BCDC
Subject: Re: Records Request Status

Kevin,

Because you did not respond to my earlier email prior to sending a courier this afternoon to pickup the documents that I have copied so far, I had not put the electronic files and scans of the emails onto a disc. Please let me know if you would like me to upload those electronic materials to a drop box or copy them to a disk to be picked up the next time you send a courier for the additional copies I am making from the paper files.

Thanks, Greg

From: Ogata, Gregory@BCDC
Sent: Wednesday, August 16, 2017 12:50:28 PM
To: kevin.vickers@bakerbotts.com
Cc: Zeppetello, Marc@BCDC
Subject: Records Request Status

Good afternoon, Kevin.

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Please let me know how you would like us to proceed.

Gregory Ogata
Legal & Enforcement Support
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102
(415) 352/3600 | gregory.ogata@bcdc.ca.gov

Vickers, Kevin

From: Vickers, Kevin
Sent: Wednesday, August 16, 2017 4:01 PM
To: 'Ogata, Gregory@BCDC'
Cc: 'Marc.Zeppetello@bccdc.ca.gov'; Carr, Chris
Subject: RE: Records Request Status

Greg,

Please do upload those electronic materials to a drop box at the earliest possible time.

Thank you,
Kevin

Kevin E. Vickers
415.291.6107 - Direct
512.751.4195 - Cell
415.291.6307 - Fax
kevin.vickers@bakerbotts.com

Baker Botts L.L.P.
101 California Street
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Vickers, Kevin

From: Zeppetello, Marc@BCDC <marc.zeppetello@bccdc.ca.gov>
Sent: Wednesday, August 16, 2017 5:41 PM
To: Vickers, Kevin; Ogata, Gregory@BCDC
Cc: Carr, Chris; David Smith; Zeppetello, Marc@BCDC
Subject: Re: Response Records Request and Notice of a Typo in the Violation Report/Complaint

Kevin and Chris

Here is the link to the dropbox that contains BCDC's electronic files for Westpoint Harbor (WPH) and scans of the emails. A few comments follow (and as noted in the subject line, I am taking this opportunity to advise you of a typo in the Violation Report/Complaint).

<https://www.dropbox.com/sh/45l6gzc33damps4/AADT24sWNKA7zrGl0XzLvCuFa?dl=0>

First, on the electronic files, you will see that many of the folders in the Permit file are empty. That is in fact the case. We have an architecture set up for electronic filing, but it is not routinely used and it includes folders for many topics or categories that do not apply to all permits or to most permit amendments. As I mentioned in a prior email, the hard-copy files are the primary files used by staff for records retention and filing.

As also previously mentioned, we did not include in the electronic copy of the Enforcement file copies of the Violation Report, the documents listed on Index of the Administrative Record, or the outstanding discovery requests.

On the scanned emails, generally we did not print and scan attachments (although in some cases, Greg printed the first page of attachments). We omitted attachments primarily because of redundancy — the attachments should all be documents that you reviewed in the hard-copy file and may have asked to be copied, or in many cases are documents you almost certainly already have. We also omitted attachments because of the time that would have been required to print and scan them, and our commitment to get you copies of the emails by close of business today. However, if you would like the attachment or attachments to any emails, or to confirm what the attachment or attachments are to a particular email, please let Greg know, and we will get you copies of any attachments on request. I also noticed that we included a few emails between your office and me, but for the most part we did not include emails between BCDC staff and David Smith and/or your office, as previously agreed.

Greg has to be out of the office tomorrow morning to set up a Commissioner working group meeting, but will be back in the afternoon. He will likely not complete copying the remaining documents from the hard-copy files until Friday and suggested that you wait until he is done before sending a messenger to pick up the remainder of the copies.

A typo was called to my attention in Paragraph VI.LLL on page 36 of the Violation Report/Complaint, copied below:

LLL. On May 24, CCCR's counsel, Mr. Gaffney, submitted a letter to the Executive Director specifically related to Sanders' failure to install and maintain signs and buoys, as required by the permit, to inform the public of the access restrictions on Greco Island and other wetlands in the Refuge. Mr. Gaffney

enclosed a number of photographs taken on April 9, 2017, showing that: (1) there are only three buoys in the Slough; (2) none of the buoys state "No Wake" as required by the permit, but one buoy states "Slow, 10 MPH," in violation of the permit; (3) no buoys contain signs about restricted access or sensitive habitat; and (4) there is a single sign adjacent to Greco Island stating "Sensitive Wildlife Habitat / Do Not Enter," but the sign is so faded that it is almost illegible; (5) there are two other faded signs on Greco Island with no writing visible; and (6) there is evidence of signs along the majority of the perimeter of Greco Island. In addition, Mr. Gaffney's letter noted that there are no posted signs about access restrictions on Greco Island and other wetlands at the Refuge at the (unauthorized) rower's dock at the Site used by 101 Surf Sports for paddleboard and kayak rentals, and that 101 Surf Sports allows people to bring dogs on rented paddle boards.

The typo is that the word "no" is missing in clause (6); it should read: "... (6) there is no evidence of signs along the majority of the perimeter of Greco Island."

We will correct this typo in the Violation Report/Complaint before we send the document to the members of the Enforcement Committee or post-it on our website.

Please let me know if you have any questions.

Regards, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeppetello@bcdca.gov

From: "kevin.vickers@bakerbotts.com" <kevin.vickers@bakerbotts.com>
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Cc: Marc Zeppetello <Marc.Zeppetello@bcdca.gov>, "chris.carr@bakerbotts.com" <chris.carr@bakerbotts.com>
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Vickers, Kevin

From: Ogata, Gregory@BCDC <gregory.ogata@bcdc.ca.gov>
Sent: Friday, August 18, 2017 4:39 PM
To: Carr, Chris
Cc: Vickers, Kevin
Subject: Copies for PRAR

Chris,

Just following up on the voicemail I just left you in case you're not by your phone. We have some more copies available. However, we are closing in about 20 minutes. Monday afternoon we anticipate having all of the copies completed for you for pick up if you'd like to wait until then.

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Vickers, Kevin

From: Vickers, Kevin
Sent: Friday, August 18, 2017 4:59 PM
To: 'Ogata, Gregory@BCDC'; Carr, Chris
Cc: 'Marc.Zeppetello@bcdca.gov'
Subject: RE: Copies for PRAR

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Vickers, Kevin

From: Zeppetello, Marc@BCDC <marc.zeppetello@bcdc.ca.gov>
Sent: Friday, August 18, 2017 4:59 PM
To: Vickers, Kevin
Subject: Automatic reply: Copies for PRAR

I will be out of the office Augst 21 through August 25 and may not be able to respond to email. If you need immediate assistance, please contact my assistant, Greg Ogata at 415.352-3658, or gregory.ogata@bcdc.ca.gov, or the BCDC Reception Desk at 415.352-3600. Thank you.

Vickers, Kevin

From: Ogata, Gregory@BCDC <gregory.ogata@bcdca.gov>
Sent: Monday, August 21, 2017 8:07 AM
To: Vickers, Kevin; Carr, Chris
Cc: Zeppetello, Marc@BCDC
Subject: Re: Copies for PRAR

Kevin, any time after 1 is perfect. I'm finishing up the last copies this morning.

Gregory Ogata
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Sent: Monday, August 21, 2017 1:45 PM
To: 'Ogata, Gregory@BCDC'; Carr, Chris
Cc: 'Zeppetello, Marc@BCDC'
Subject: RE: Copies for PRAR

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August 7, 2017

Christopher J. Carr
TEL: 4152916208
FAX: 4152916308
chris.carr@bakerbotts.com

VIA FEDEX OVERNIGHT MAIL AND
E-MAIL (PUBLICRECORDS@BCDC.CA.GOV)

Legal Secretary
San Francisco Bay Conservation and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102-7019

Re: Public Records Request

Dear Custodian of Records:

Pursuant to the California Constitution and the California Public Records Act, I am requesting an opportunity to inspect and copy all “public records” (to the utmost extent of the meaning of that term)¹ that relate in any way to the alleged permit violations or purported facts asserted in the Violation Report/Complaint for the Imposition of Administrative Civil Penalties (Enforcement Investigation No. ER2010.013) that the Commission mailed to Mark Sanders and Westpoint Harbor, LLC. My request to inspect and copy includes, but is not limited to, public records received, sent, created, or modified by the following individuals:

- Robert (Bob) Batha
- Andrea (Ande) Bennett
- John Bowers
- Erik Buehmann
- Andrea Gaut
- Adrienne Klein
- Steve McAdam
- Brad McCrea
- Ellen Miramontes
- Tom Sinclair
- Matthew Trujillo
- Marc Zeppetello

¹ The term “public records” is broadly defined and includes, but is not limited to, records retained on employees’ personal devices or accounts. *See City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608.

Once you make the records available for inspection, I will send an agent to your office to inspect and copy the records. With respect to all records that exist in electronic format at the time of your receipt of this request, I ask that you make those records available to me in electronic format.

If there are any questions concerning my request, please contact me at chris.carr@bakerbotts.com or (415) 291-6208 as soon as possible. As you know, California Government Code Section 6253(b) requires that BCDC "make the records promptly available." If you contend that providing me access to the records I am requesting will take more than four days, please contact me so that we can discuss the possibility of providing me access to the records in tranches as quickly as possible.

Respectfully,



Christopher J. Carr